



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE November 7, 2022

TO Members of Joint Agriculture, State and Public Lands and Water Resources Interim Committee

FROM Heather N. Jarvis, LSO Attorney

SUBJECT Obligations for Lands Held in Trust by the State
Memo to accompany 23LSO-0200 Land exchanges-priority.

This memo is a brief reminder of the State's obligations as trustees of state trust lands. Any statutory factors the Legislature inserts for consideration in the management, leasing, sale, exchange, or other disposition of state trust lands must serve the beneficiaries of the trust lands.

Trust Land Obligations Under Wyoming Act of Admission

When Wyoming was admitted into the United States, the Act of Admission granted lands to the state for a number of specified purposes. The State of Wyoming received numerous grants of federal lands for specific purposes such as for support of public schools, the University of Wyoming, a penitentiary, a miner's hospital and more (See Wyoming Act of Admission, Sections 4 through 11). School lands granted, for example, may be sold or leased with the proceeds to constitute a permanent school fund, the interest only being expendable. Thus the lands were not granted outright to the state but are to be held in trust by the state for the purposes specified. "When acting as trustees, publicly elected officials are prohibited by law from using the trust lands under their control to directly benefit the general public."¹

Trust Land Obligations Under Wyoming Constitution

Briefly, under the Wyoming Constitution, State lands acquired from the United States are to be managed according to "the conditions and limitations that may be imposed by the act or acts of congress, making such grants or donations" (Article 18, Section 1) and applied to "the specific purposes specified in the original grant or gifts" (Article 18, Section 2). These purposes include "for educational purposes, for public buildings and institutions and for other objects" (Article 18, Section 1). For example, Wyoming is required to manage school trust lands for maximum benefit to the public schools. Wyoming's Constitution declares that funds from school trust lands are

¹ Beaver, *Management of Wyoming's State Trust Lands from 1890-1990: A Running Battle Between Good Politics and The Law*, XXVII LAND AND WATER LAW REVIEW 1991. In support of that statement the author cites a South Dakota case that states "[t]he beneficiaries do not include the general public, other governmental institutions, nor the general welfare of this state." *Kanally v. State*, 368 N.W. 2d 819, 824 (S.D. 1985). A number of other cases are cited in support of this general proposition.

“perpetual funds for school purposes” (Article 7, Section 2). The Board of Land Commissioners has “direction, control, disposition and care of all lands that have been heretofore or may hereafter be granted to the state,” is supposed to manage school lands for the benefit of public schools, and if disposing of state lands is supposed to “realized the largest possible proceeds” (Article 18, Section 3).

Legislative Direction

The Constitution gives the Legislature a significant say in how state trust lands are managed and disposed of. Article 18, Section 4 provides:

The legislature shall enact the necessary laws for the sale, disposal, leasing or care of all lands that have been or may hereafter be granted to the state, and shall, at the earliest practicable period, provide by law for the location and selection of all lands that have been or may hereafter be granted by congress to the state, and shall pass laws for the suitable keeping, transfer and disbursement of the land grant funds, and shall require of all officers charged with the same or the safekeeping thereof to give ample bonds for all moneys and funds received by them.

Pursuant to Constitutional directive, the Legislature has provided laws for the sale, disposal, leasing and care of state trust lands.² It has provided an exchange, which is not the same as a sale, shall only be made “value for value.”³ Previously, while recognizing the duties of the State as trustee, the Wyoming Supreme Court had held that state trust lands are appropriately managed for the greatest benefit of the *state*.⁴ More recently, however, the Wyoming Supreme Court discusses changes the Legislature made in 1997:

Prior to 1997, § 36-5-105(a) provided that state lands must be leased in a manner inuring to the greatest benefits to the “state.” In 1997, the legislature amended that section to provide that state lands must be leased in a manner inuring to the greatest benefit of the “state land trust beneficiaries.” The legislature also deleted the minimum and maximum limits within which rental values were required to fall, inserting instead the language providing that acceptable bids must be “not less than fair market value, as determined by the economic analysis pursuant to W.S. 36-5-101(b).” The legislature also added the language requiring the holder of an expired license to meet “the highest bid offered which is based on the fair market value, using the formula developed by the board pursuant to W.S. 36-5-101(b).”⁵

There is Wyoming Supreme Court support for the general proposition that the obligation to the beneficiaries need not be considered in a vacuum. Implicitly acknowledged in Wyoming case law is the point that the trustee’s duties are not only to current beneficiaries, but to future beneficiaries as

² See Wyoming Statutes, Title 36.

³ *Dir. of the Office of State Lands & Invs. v. Merbanco, Inc.*, 2003 WY 73, 70 P.3d 241, 244 and 248 (2003) (citing W.S. 36-1-111(a)).

⁴ See e.g. *Frolander v. Ilsley*, 72 Wyo. 342 (1953); *Thompson v. Conwell*, 363 P.2d 927 (Wyo. 1961).

⁵ *Office of State Lands & Invs. v. Mule Shoe Ranch, Inc.*, 2011 WY 68, ¶ 25, 252 P.3d 951, 957 (2011).

well. For example, while a greater income might have been received immediately from a conflicting lease offer amount in one case involving competing bids for leasing state lands, accepting a slightly lower amount from an existing lessee which resulted in a stable ranching economy might be more beneficial to the trust beneficiaries overall. That case provided:

School lands are, it is true, held in trust by the state, and the trust must be administered wisely and prudently so that its aim may be reasonably attained. But prudence and wisdom do not, we think, require that it must be so administered as to destroy the ranching interests of the state which form a large part of the source from which our schools are nourished. We see no reason why the interest of the trust and that of the ranchers in the state may not be harmonized so as to result in the best interest of the state as well as the schools. The board, under the direction of the legislature, is at least as competent to do that as is the court.⁶

The Court has acknowledged the state land trust duties and what is “at least a solemn engagement on the part of the state that such conditions and limitations (imposed by the Act of Admission) shall be observed by its laws.”⁷ When the Legislature prescribes requirements regarding the exchange or sale of public lands the concern is that the Legislature cannot disregard the Wyoming Act of Admission or impinge on the Board of Land Commissioners' duty (and in fact the state's duty) in administering state trust lands.

⁶ *Frolander v. Ilsley*, 72 Wyo. 342, 365 (1953). It is important to note that in 1997 the legislature made changes to bid requirements under W.S. 36-5-105(a), as noted in *Office of State Lands & Invs. v. Mule Shoe Ranch, Inc.*, supra; so, cases before that date that supported management for the greatest benefit of the *state*, such as *Frolander*, may provide little guidance since the statute was changed to recognize management for the greatest benefit of state land *trust* beneficiaries.

⁷ *State ex. rel. Huckfeldt v. Board*, 20 Wyo. 162 (1911).